REMARKS

The Office Action dated July 5, 2005, has been received and carefully noted. The above amendments and the following remarks are submitted as a full and complete response thereto.

By this Amendment, claim 7 has been amended to correct a typographical error. No new matter has been added. Claims 1, 3, 4, 6, 7 and 10 are pending and respectfully submitted for consideration.

Claims 1, 4 and 6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kwok et al. (U.S. Patent No. 6,044,844, "Kwok"). Claims 4 and 6 depend from claim 1. The Applicant respectfully submits that claims 1, 4 and 6 recite subject matter that is neither disclosed nor suggested by Kwok.

Claim 1 recites that a gap between a top of the linear projection and a part of the inner wall opposite to the linear projection is in a range from 25 % to 30 % of the distance from a part of the inner wall on which the linear projection is formed to the part of the inner wall opposite to the linear projection. The Office Action took the position that Fig. 5 of Kwok discloses a gap between a top of the linear projection and a part of the inner wall opposite the linear projection being approximately 25 % to 30 % of the distance from the part of the inner wall on which the linear projection is formed to the part opposite the projection. See page 2, lines 13-17 of the Office Action. Kwok discloses a tube including an inner wall defining a passageway through which fluid can pass, and one or more inwardly directed ribs depending from the inner wall. See column 1, line 66 to column 2, line 2 of Kwok. However, there is no disclosure or

suggestion in Kwok of a gap between a top of the linear projection and a part of the inner wall opposite the linear projection being approximately 25 % to 30 % of the distance from the part of the inner wall on which the linear projection is formed to the part opposite the projection.

The Office Action took the position that Kwok discloses in Fig. 5, a gap meeting the limitations of claim 1. In the Response to Arguments section of the Office Action, page 4, line 18 to page 5, line 10, of the Office Action states:

> "Applicant argues that the Kwok reference does not disclose a specific dimensional relationship between the inwardly directed ribs and the inner wall, and therefore fails to disclose the gap between a top of the projection and the wall opposite the projection in the range of 25% to 30%. Applicant further states that a claim is only anticipated if each and every element set forth in the claim is found, either expressly or inherently described in the reference. It should be noted that the figures are a part of the reference's disclosure and though not drawn to scale, fig. 5 clearly presents a gap between the projection and the wall opposing the gap. Measuring the distance between the upper and lower inner walls presents one value. Measuring the distance between the top of the projection and the opposing inner wall presents a different value that is approximately 25% of the first value. It is reasonable to believe that the figure expressly or inherently describes the dimensions claimed."

As a preliminary matter, the Applicant submits that according to U.S. case law, patent drawings are not working drawings and that specific teachings relative to sizes between component parts cannot be found from a drawing of a patent unless the patent specifically states that the dimensions are critical and important. In re Chitayat, 161 USPQ 229 (1969). See also Ex parte Lewis et al. which states:

> In the answer (pp. 3-4), the examiner set forth measurements taken from Figure 2 of Harris using an engineering scale ruler. From those measurements the examiner calculated that the "extent limitation" was met by the valve shown in Figure 2 of Harris. With respect to

> Sorenson the examiner declared that it is obvious that the "extent limitation" was met by the valve shown in Figure 2.
>
> We find the examiner's position to be without merit. First, it is well-settled that patent drawings are not drawn to scale and accordingly, an examiner's argument based upon measurement of the patent drawings are of little value. See In re Chitayat, 408 F.2d 475, 478, 161 USPQ 224, 226 (CCPA 1969); In re Wright, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977); Ex parte Oetiker, 23 USPQ2d 1651, 1653 (Bd. of Pat. App. & Int. 1990), rev'd on other grounds, In re Oetiker, 977 F.2d 1443 24 USPQ2d 1443 (Fed. Cir. 1992).

Id. WL 519762 (Bd. App. 2002).

In this case, the Office Action measured the distance between the upper and lower inner walls to obtain one value, and measured the distance between the top of the projection and the opposing inner wall to obtain a different value. The Office Action then stated that the different value is approximately 25% of the first value. The Office Action then rejected claim 1 based on measurements of Fig. 5 absent any written description in the specification of Kwok regarding quantitative values. As such, the rejection of claim 1 is not supported by current case law. There is no disclosure or suggestion in Kwok of a gap between a top of the linear projection and a part of the inner wall opposite to the linear projection in a range from 25% to 30% of the distance from a part of the inner wall on which the linear projection is formed to the part of the inner wall opposite to the linear projection, as asserted in the Office Action.

The Applicant also submits that the relative dimensions of the space between the ribs 42, 44, 46 in Kwok and the bottom walls 32, 34 do not meet the claimed limitation. Specifically, the description of the tubes 18, 27 in the specification of Kwok does not disclose a gap in the range of 25% to 30% nor do the drawings show a gap in the range

of 25% to 30%, as recited in claim 1. Thus, Kwok would not reasonably teach one of ordinary skill in the art the claimed limitation *with or without an absolute measurement*, which, as discussed above, is not evidence of actual proportions because the drawings in Kwok are not to scale.

The Office Action took the position that it reasonable to believe that Fig. 5 expressly or inherently describes the dimensions claimed. See page 5, lines 4-10 of the Office Action. However, the Applicant respectfully submits that as the drawings in Kwok are not to scale, and there is no disclosure of the dimensional relationship between the ribs 42, 44, 46 and the bottom walls 32, 34, one of ordinary skill in the art would not consider Fig. 5 as expressly or inherently teaching a gap between a top of the linear projection and a part of the inner wall opposite to the linear projection is in a range from 25 % to 30 % of the distance from a part of the inner wall on which the linear projection is formed to the part of the inner wall opposite to the linear projection.

As such, Kwok does not teach or suggest each and every feature of the invention as recited in claim 1, as required by M.P.E.P. § 2143.03. Accordingly, the Applicant respectfully requests withdrawal of the rejection of claim 1 in view of Kwok.

According to U.S. patent practice, a reference must teach every element of a claim in order to properly anticipate the claim under 35 U.S.C. §102. In addition, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628,631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "Every element of the claimed invention must be arranged as in the claim . . . . . [t]he identical invention must be shown in as complete detail as is contained in the

patent claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989) (emphasis added). Accordingly, Kwok does not anticipate claim 1, nor is claim 1 obvious in view of Kwok. As such, the Applicant submits that claim 1 is allowable over the cited art.

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kwok in view of Seckel (U.S. Patent No. 4,867,485). Claim 3 depends from claim 1. The Office Action acknowledged that Kwok does not disclose linear projections having a flat surface at the top. Seckel was cited for curing this deficiency. The Applicant respectfully submits that the combination of Kwok and Seckel fails to disclose or suggest the claimed features of the invention.

As discussed above, claim 1, from which claim 3 depends, recites a gap between a top of the linear projection and a part of the inner wall opposite to the linear projection is in a range from 25 % to 30 % of the distance from a part of the inner wall on which the linear projection is formed to the part of the inner wall opposite to the linear projection. Kwok fails to disclose or suggest this feature. Seckel fails to cure the deficiencies in Kwok. As such, the combination of Kwok and Seckel fails to disclose or suggest each and every feature of the invention as recited in claim 1, and therefore, dependent claim 3.

Claims 7 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kwok in view of Duncan (U.S. Patent No. 4,257,422). Claim 10 depends from claim 7. The Office Action acknowledged that Kwok does not disclose that tops of the linear projections face each other. Duncan was cited for curing this deficiency. The

Applicant respectfully submits that claims 7 and 10 recite subject matter that is neither disclosed nor suggested by the combination of Kwok and Duncan.

Claim 7 recites that a gap between the tops of the linear projection is in a range from 25 % to 30 % of the distance between parts of the inner wall on which the linear projections are respectively formed. The Office Action took the position that Kwok discloses projections being spaced 25 % to 30 % from the wall opposite to the projection. See page 4, lines 10-12 of the Office Action. Similar to the discussion above, Kwok fails to disclose at least the feature of a gap between the tops of the linear projections being in a range from 25 % to 30 % of the distance between parts of the inner wall on which the linear projections are respectively formed. Duncan further fails to cure the deficiencies in Kwok with respect to claim 7. As such, it would not have been obvious to combine the teachings of Kwok with Duncan to teach or suggest all of the claimed features of the invention. As such, the combination of Kwok and Duncan fails to disclose or suggest each and every feature of the invention as recited in claim 7.

Under U.S. patent practice, the PTO has the burden under §103 to establish a *prima facie* case of obviousness. In re Fine, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Both the case law of the Federal Circuit and the PTO itself have made clear that where a modification must be made to the prior art to reject or invalidate a claim under §103, there must be a showing of proper motivation to do so. The mere fact that a prior art reference could arguably be modified to meet the claim is insufficient to establish obviousness. The PTO can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.

Id. In order to establish obviousness, there must be a suggestion or motivation in the reference to do so. See also In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (prior art could not be turned upside down without motivation to do so); In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); In re Dembiczak, 175 F.3d 994 (Fed. Cir. 1999); In re Lee, 277 F.3d 1338 (Fed. Cir. 2002). The Office Action restates the advantages of the present invention to justify the combination of references. There is, however, nothing in the applied references to evidence the desirability of these advantages in the disclosed structure.

In view of the above, the Applicant respectfully submits that the cited references do not support a *prima facie* case of obviousness for purposes of a rejection of claims 3 and 7 and 10 under 35 U.S.C. §103 as Kwok, Seckel, and Duncan either singly, or in combination, do not disclose or suggest each and every feature of the claimed invention.

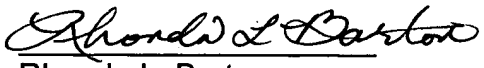
Claims 3, 4 and 6 depend from claim 1 and claim 10 depends from claim 7. The Applicant respectfully submits that these dependent claims are allowable at least because of their dependency from allowable base claims 1 and 7. Accordingly, the Applicant respectfully requests withdrawal of the objection and rejections, allowance of claims 1, 3, 4, 6, 7 and 10 and the prompt issuance of a Notice of Allowability.

Should the Examiner believe anything further is desirable in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an

extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 103213-00060.**

Respectfully submitted,



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